

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

KEVIN EARL HARDY,

Defendant.

Case No. 3:18-cr-00111-SLG

**ORDER RE REPORT AND RECOMMENDATION REGARDING MOTION TO
SUPPRESS [DOC. 25] RE-REFERRED FOR CLARIFICATION**

Before the Court at Docket 25 is Defendant Kevin Hardy's Motion to Suppress Evidence Derived from Search of Residence. The United States opposed at Docket 31. The motion was referred to the Honorable Magistrate Judge Matthew M. Scoble. At Docket 34, the Magistrate Judge issued his Final Report and Recommendation, in which he recommended that the motion be denied. At Docket 40 the Court adopted the Magistrate Judge's factual findings, rejected his legal conclusion, and requested supplemental briefing. Mr. Hardy filed a supplemental brief at Docket 42, as did the United States at Docket 46. The motion was re-referred to the Magistrate Judge, who at Docket 50 issued a Report and Recommendation Regarding Motion to Suppress [Doc. 25] Re-Referred for Clarification. Mr. Hardy objected to the supplemental Report and Recommendation at Docket 53.

The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1). That statute provides that a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.”¹ A court is to “make a de novo determination of those portions of the magistrate judge’s report or specified proposed findings or recommendations to which objection is made.”² But as to those topics on which no objections are filed, “[n]either the Constitution nor [28 U.S.C. § 636(b)(1)] requires a district judge to review, de novo, findings and recommendations that the parties themselves accept as correct.”³

On de novo review, the Court agrees with the Magistrate Judge’s analysis that there was probable cause to issue the search warrant for the camper in the absence of the information that the trooper obtained after Mr. Hardy opened the door to the camper. The Court finds that the requisite nexus between the stolen property and the camper exists so as to warrant the search for the stolen property, given the nature of the recent burglary, the types of items that were missing from the burglarized home as described by the trooper, the fact that the burglary had taken place only a few days prior, and the normal inferences that follow from the

¹ 28 U.S.C. § 636(b)(1).

² *Id.*

³ *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings.”).

fact that the stolen vehicle was on the Paddy Place property.⁴ See generally *United States v. Spearman*, 532 F.2d 132, 133 (9th Cir. 1976). In short, there was a “fair probability” that additional stolen property from the Loussac home would be found in the camper. *United States v. Jackson*, 756 F.2d 703, 705 (9th Cir. 1985) (“Direct evidence linking criminal objects to a particular site is not required for the issuance of a search warrant”; citing *United States v. Poland*, 659 F.2d 884, 897 (9th Cir.. 1981)). Therefore, the firearms obtained in the search of the camper that form the basis for Count One will not be suppressed because of the inevitable discovery exception to the exclusionary rule. See *Nix v. Williams*, 567 U.S. 431, 444 (1984). Accordingly, the firearm that resulted in Count Two is also not subject to suppression.

For the foregoing reasons, the motion to suppress at Docket 25 is DENIED.

DATED this 3rd day of July, 2019 at Anchorage, Alaska.

/s/ Sharon L. Gleason
UNITED STATES DISTRICT JUDGE

⁴ The Court disagrees with Mr. Hardy’s assertion that the warrant “could be reasonably construed as authorizing a search of the trailer for contraband only,” and not for stolen property. The Court has listened to the recording of the search warrant application (Docket 49); from that recording it is clear that the Magistrate Judge intended to authorize a search of the camper for the stolen items in addition to drugs and drug paraphernalia. Cf. Docket 53 at 3, n.1.